

A.G. Contract No.: KR01-0580TRN  
ADOT ECS File: JPA 01-57  
Project No.: AC-366(39) 089AYV357  
TRACS No.: H2741 03C  
Project: SR-89A – Dumas Ditch @ Crescent  
Section: Moon Ranch – Mitigation  
FS Agreement No. 02-CO-11030406-605

**INTERGOVERNMENTAL AGREEMENT**  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE COCONINO NATIONAL FOREST

THIS AGREEMENT is entered into March 22, 2002 pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, as amended between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the COCONINO NATIONAL FOREST acting by and through its Forest Supervisor.

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Forest Service is empowered by the Cooperative Funds Act of June 30, 1914, 16 U.S.C. 498 and the Intergovernmental Cooperative Act of 1968, Title III, 31 U.S.C. 6501-6508, Pub. L. 90-577, as amended, Pub. L. 97-258, September 13, 1982, and has delegated to the undersigned the authority to execute this agreement on behalf of the Forest Service.

3. Incident to roadway improvements on SR-89A now under construction by the State, it is a requirement of the 404 permit to mitigate and stabilize water flows in Dumas Ditch to provide an adequate water supply to maintain an existing riparian area. The work consists of constructing a diversion structure at the inlet, stabilize approximately 340 linear feet of Dumas Ditch, reinforce the Southeast side of the channel, construct a headwall and spillway, install 8" ports with slide gates, and provide a lining for the old existing Dumas Ditch, at a currently estimated cost of \$126,500.00, all at State expense, hereinafter referred to as the Project.

NO. 25195

Filed with the Secretary of State

Date Filed: 03/22/02

Petrey Gayles  
Secretary of State

By: William J. Gruenewald

4. The Forest Service manages the National Forest lands and the resources at the Crescent Moon Ranch, including the upper portion of the Dumas Ditch. Restoration of the Dumas Ditch will restore the vital flow of water that historically supported a stringer of riparian tree species along the Ditch, allow the Forest Service to water the lower bench, west pasture riparian area, ensure the Forest Service the continued right to water throughout the ranch property, provide water needed to restore the historic orchard on the ranch, and enhance and preserve the recreation setting of the area.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

### **1. The Forest Service will:**

a. Invoice the State prior to commencement of work to construct a diversion structure at the inlet, stabilize approximately 340 linear feet of Dumas Ditch, reinforce the Southeast side of the channel, construct a headwall and spillway, install 8" ports with slide gates, and provide a lining for the old existing Dumas Ditch, currently estimated at \$126,500.00, (including overhead) for the specific payment period. Overhead will be assessed at the rate of 15%. Costs exceeding the current estimate of \$126,500.00 will require the concurrence from the State prior to any work commencing. Upon concurrence from the State, invoice the State prior to the commencement of work for the additional payment period. All invoices shall be sent, as noted in III. 7. herein, in the form of Exhibit A, which is attached hereto and made a part hereof.

b. Complete all aspects generally in accordance with the requirements of the National Environmental Protection Act and 404 permit. Develop design plans, specifications and such other documents and services required for the Project, and provide them to the State for concurrence.

c. As required, develop cooperative agreements with other entities or call for contract bids and, upon the concurrence of the State, award one or more construction contracts for the Project. Administer same and make all payments to the cooperators or contractor(s). Be responsible for any contractor claims for extra compensation due to delays for whatever reason.

d. Upon completion, approve and accept the project on behalf of the parties.

### **2. The State will:**

a. Review and provide comments, and approve the design plans for Project.

b. Be responsible for actual costs of the project. Pay the Forest Service within 30 days after receipt and approval of the invoice(s) for the actual costs of the Project, including overhead assessed at the rate of 15%, in a total amount currently estimated at \$126,500.00. Costs exceeding the current estimate of \$126,500.00 will require the concurrence from the State prior to commencement of work for the additional payment period.

## **III. MISCELLANEOUS PROVISIONS**


1. This agreement shall become effective upon filing with the Arizona Secretary of State

2. This agreement shall remain in force and effect until completion of said improvements and payments but not to exceed 5 years from the date of signature unless extended; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the commencement of performance, upon thirty (30) days written notice to the other party.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.
4. Pursuant to Section 22, Title 41, United States Code, no member of, or Delegate to, Congress shall be admitted to any share or part of this instrument, or any benefits that may arise therefrom.
5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.
6. Applicable laws of the State and Federal government shall govern the rights of the parties with respect to the performance of this agreement. The parties hereto shall select a process for the resolution of claims or disputes relating to this agreement, compliant with applicable laws and regulations of the State and Federal government, and acceptable to the State and Federal government. Such process will include a provision for arbitration.
7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:  
  
Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, **Mail Drop 616E**  
Phoenix, AZ 85007  
  
Forest Supervisor  
Coconino National Forest  
2323 E. Greenlaw Lane  
Flagstaff, AZ 86004
8. Attached hereto is the written determination of each party's legal counsel that the parties are authorized under their respective laws to enter into this agreement and the agreement is in proper form.
9. Improvements placed on National Forest System land at the direction of either of the parties, shall thereupon become the property of the United States, and shall be subject to the same regulations and administration, including maintenance, of the Forest Service as other National Forest improvements of a similar nature. No part of this instrument shall entitle the State to any share of interest in the project other than the right to use and enjoy the same under the existing regulations of the Forest Service.
10. This instrument in no way restricts the forest Service or the State from participating in similar activities with other public or private agencies, organizations, and individuals.
11. No part of this instrument shall entitle the State to any share or interest in the project other than the right to use and enjoy the same under the existing regulations of the forest Service, and the right to enforce all terms and conditions of this agreement.
12. Contributions authorized by the State for use by the Forest Service, which are not spent or obligated for project(s) approved under this instrument, will be refunded to the State or authorized for use for new projects as agreed with the State, pursuant to Part II (A) and (B) (amendments).
13. Any State contributions made under this instrument do not by direct reference, or implication convey forest Service endorsement of the State's products or activities.
14. Modifications shall be made by mutual consent of the parties, prior to any changes being performed. The Forest Service and the State are not obligated to fund any changes not properly approved in advance.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**USDA FOREST SERVICE**  
Coconino National Forest

By   
JIM GOLDEN  
Forest Supervisor

**STATE OF ARIZONA**  
Department of Transportation

By   
WILLIAM J. HIGGINS, P.E.  
Deputy State Engineer

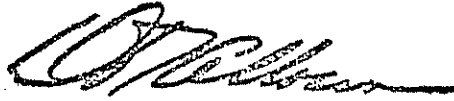
The authority and format of this instrument  
has been reviewed and approved for signature

By  3/12/02  
ELIZABETH A. BLAKE  
Forest Grants & Agreements Specialist

RESOLUTION

BE IT RESOLVED on this 22nd day of April 2001, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona, that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the Coconino National Forest for the purpose of constructing improvements to Dumas Ditch.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator approval and execution.

A handwritten signature in black ink, appearing to read 'D. Allocco', written over a horizontal line.

DAVID R. ALLOCCO, P.E.  
Assistant State Engineer  
Engineering Technical Group  
for Mary E. Peters, Director

**ARIZONA DEPARTMENT OF TRANSPORTATION  
PROGRESS PAYMENT REPORT**

		Progress:	Final:	Payment Report
Report No.	FA	Non FA	Exp. Budget Obj. Code	JPA
Project No.		Date Ending:		
TRACS No.				
Name of Project				
Name of Sponsor				
Date Started	Estimated Completion Date: On Going		% Billed	% Complete

**SUMMARY OF WORK FOR WHICH PAYMENT IS REQUESTED**

ITEM	DESCRIPTION	CONTRACT AMOUNT ESTIMATE	Previous Accumulative Amount	Current Month	Accumulative Amount
1					\$0.00
THIS FORM CAN BE ACQUIRED VIA ELECTRONIC MAIL					

Submitted By: _____		Date: _____	Total: To: \$0.00 Date: _____
Approved By: _____ ADOT Project Manager		Date: _____	Total: Previous: \$0.00 Report: _____
Approved By: _____ Joint Project Administration		Date: _____	Current: Report: \$0.00

**CONMASTR/PRFORMAT**



STATE OF ARIZONA

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ATTORNEY GENERAL

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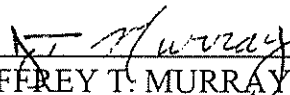
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR01-0580TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED March 11, 2002.

JANET NAPOLITANO  
Attorney General

  
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JEFFREY T. MURRAY  
Assistant Attorney General  
Transportation Section

JTM:ggt

Enc.

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